Supreme Court, U.S.
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No. 85-1693

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

CHARLES A. BOWSHER, COMPTROLLER GENERAL OF THE UNITED STATES, ET AL., APPELLANTS

v.

AMERICAN POSTAL WORKERS UNION, AFL-CIO, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

RESPONSE TO JURISDICTIONAL STATEMENT

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As noted by appellants (J.S. 1, 4), the order of the United States District Court for the District of Columbia which has been appealed in this case grants declaratory relief identical to the relief granted by the Court in Bowsher v. Synar, et al.; United States Senate v. Synar, et al., and O'Neill v. Synar, et al., numbers 85-1377, 85-1378, 85-1379, in which oral argument was presented to the Court on April 23, 1986. Appellants in this case seek to present to the Court "the identical Constitutional question presented by the Synar appeals" (J.S. 4).

We agree with appellants that the District Court decided this case on the basis of its decision in Synar, and that it granted the identical declaratory relief in this case as in that. Accordingly, if the judgment below is affirmed in Synar, the judgment below in this case should be summarily affirmed. The same result should follow if this Court concludes that the judgment in Synar should be affirmed on some ground other than that on which the District Court based its decision. Contrary to appellants' submission, however, reversal of the District Court's judgment in Synar would not necessarily compel the conclusion that the present appellees did not state a valid claim that the automatic deficit reduction mechanism of the Gramm-Rudman Act is unconstitutional. Whereas the Synar litigation focuses exclusively on the role of the Comptroller General in that process, the present appellees raised a separate and distinct claim of unconstitutionality in their complaint below, viz. The present appellees alleged that the joint participation of the Directors of the Office of Management and Budget (OMB) and the Congressional Budget Office (CBO) under the Act unconstitutionally commingled legislative and executive powers in violation of the constitutional separation of powers. This constitutional issue is substantial and would not be resolved by a decision reversing the District Court's decision with respect to the role of the Comptroller General.

Accordingly, if the judgment in Synar is not affirmed, the Court should note probable jurisdiction of the present appeal and set the case for argument on the remaining issue -- the constitutionality of the joint participation of OMB and the CBO. Alternatively, the decision on the judgment of the District Court should be vacated for further proceedings in light of the Court's decision in Synar, which would leave the joint participation issue for the District Court's disposition in the first instance.

A separate certificate of service is enclosed.

Respectfully submitted,
Darryl J. Anderson
Counsel for Appellees

Dated: May 20, 1986